



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

November 12, 2015

PR 15-55

Mr. David Eikeland

**Re: Eikeland v. Johnston Police Department**

Dear Mr. Eikeland:

The investigation into your Access to Public Records Act ("APRA") complaint filed against the Johnston Police Department ("Police Department") is complete. By email correspondence dated May 30, 2015, you contend that the Police Department violated the APRA when it failed to respond to your April 22, 2015 APRA request wherein you sought a "record of the Johnston's Chief of Police email address." It appears, based upon the evidence submitted, that on April 22, 2015 you sent an email to the Chief of Police's Administrative Assistant, Ms. Lori Anderson. You sent the email in what appears to have been a series of emails relating to another subject-matter to Ms. Anderson's personal "Yahoo" email address.

In response to your complaint, we received a response from the Police Department's legal counsel, William J. Conley, Jr., who provided an affidavit from the Johnston Police Chief Richard S. Tamburini. Chief Tamburini states, in pertinent part:

"Although not aware of this specific e-mail at the time it was sent, in reviewing it I have determined that Mr. Eikeland is in fact not requesting a public record covered by the Rhode Island Access to Public Records Act – he is simply asking a question.

Mr. Eikeland has not been denied access to the information he requested as it is publicly available on the Johnston Police Department website."<sup>1</sup>

We acknowledge your reply dated July 29, 2015.

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<sup>1</sup> Chief Tamburini enclosed a copy of a portion of the Johnston Police Department website, which contains his e-mail address. It is unclear to us whether this information was posted on the website at the time of your request, although your July 29, 2015 response does indicate that "the email address was available on-line."

In examining whether a violation of the APRA has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether an infraction has occurred, but instead, to interpret and enforce the APRA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Police Department violated the APRA. See R.I. Gen. Laws § 38-2-8. In other words, we do not write on a blank slate.

At the outset, we note that the APRA states that, unless exempt, all records maintained by any public body shall be public records and every person shall have the right to inspect and/or copy such records. See R.I. Gen. Laws § 38-2-3(a). To effectuate this mandate, the APRA states that each public body shall establish written procedures regarding access to public records. See R.I. Gen. Laws § 38-2-3(d). The APRA procedures must include the identification of a designated public records officer or unit, how to make a public records request, and where a public records request should be made. Id. The Police Department does have written procedures regarding access to its public records. See [http://johnstonpd.com/pdfs/Records\\_Request\\_Form.pdf](http://johnstonpd.com/pdfs/Records_Request_Form.pdf)

The Police Department's policy states, in pertinent part:

"To reach us by telephone please call (401) 231-4210 and ask to be connected to the Records Division. Requests for records may be mailed to the Johnston Police Department, Records Division, which is the Division within the Johnston Police Department designed to handle these matters \* \* \* The mailing address is: Johnston Police Department, ATTN: Records Division, 1651 Atwood Avenue, Johnston, RI 02919.

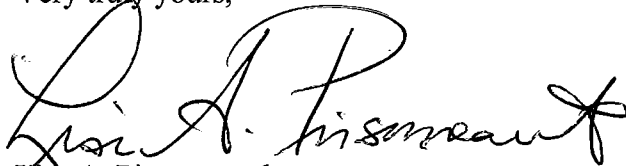
The regular business hours of the Records Division are 8:00 a.m. to 4:00 p.m., Monday – Friday. If you come in after regular business hours, please complete the Public Records Request Form at the front desk and return it to the Records Division the next business day." (Emphases added).

The Police Department designates its Records Division as the public records unit and explicitly states that APRA requests can be mailed or hand delivered to the Records Division. Here, your April 22, 2015 email, which you assert is an APRA request, was made via email to a person other than the designated public records officer. You make no argument, nor do you present any evidence, that your April 22, 2015 email did in fact comport with the Police Department's APRA procedure. This Department has previously determined that an APRA request must first comport with a public body's APRA policy before we can decide whether a violation has occurred, and we see no reason to depart from the plain language of the APRA and our findings. See e.g., Catanzaro v. East Greenwich Police Department, PR 13-08; Hazelwood v. Town of West Greenwich, PR 13-09; ARI v. New Shoreham Police Department, PR 15-26. Indeed, the Police Chief's affidavit that indicates he was "not aware of this specific e-mail at the time it was sent," as well as the lack of a response from the Records Division, is indicative of the fact that your request was made outside the Police Department's APRA procedures. Since your April 22, 2015 email request did not comport with the Police Department's APRA procedures, we find no violation.

While the Attorney General has found no violation, nothing within the APRA prohibits an individual from obtaining legal counsel for the purpose of instituting injunctive or declaratory relief in Superior Court. See R.I. Gen. Laws § 38-2-8(b).

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa A. Pinsonneault", with a stylized flourish at the end.

Lisa A. Pinsonneault  
Special Assistant Attorney General  
Extension 2297

Cc: William J. Conley, Jr., Esquire